

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
THOMAS JOSEPH CAHILLANE,) CASE NO. 04-65210 JPK
) Chapter 7
Debtor.)

ORDER REGARDING DEFECTIVE NOTICE

On September 2, 2009, the Chapter 7 Trustee filed an Application for Authority to Compromise and Partially Settle Procedurally Consolidated Adversaries, together with a form of notice [record entry #430] served on creditors and parties-in-interest with respect to the Application. The Trustee also filed a Motion to Shorten Notice with respect to the notice of the Application on September 2, 2009.

Turning first to the Motion to Shorten Notice, Fed.R.Bankr.P. 2002(a)(3) requires a 20-day notice to creditors and parties-in-interest of a “hearing on approval of a compromise or settlement of a controversy . . . unless the court for cause shown directs that notice not be sent”. The negative inference derived from the language of this rule is that 20 days’ notice is mandatory, unless the court determines that no notice at all is necessary. Even if one were to construe the rule to allow the court to shorten notice, at minimum some “cause” for the need to shorten notice must be established. The Motion to Shorten Notice states no reason for its request whatsoever. The court determines that the Motion to Shorten Notice should be denied.

Now we turn to the Notice itself. The Trustee chose to utilize LBF 3A as the form of notice to be provided pursuant to N.D.Ind.L.B.R. B-2002-2(c). Thus, entities receiving the Notice did not receive a copy of the Motion itself. The Notice is deficient in the following particulars:

1. The Notice does not “specifically state what you are asking the court to do” in contravention of N.D.Ind.L.B.R. B-2002-2(c)(3): it merely states what the Trustee proposes,

and states nothing about the relief requested from the court.

2. The Notice fails to comply with N.D.Ind.L.B.R. B-2002-2(c)(4): it does not state the grounds for the Motion nor even identify the adversary proceedings which are proposed to be partially compromised. No one receiving this Notice would have a clue from it as to the issues which were contested, the manner in which those issues were addressed, the identity of the parties involved in any settlement agreement, or even the case in which background information concerning matters relating to this settlement agreement could be obtained.

The Notice therefore fails to conform to necessary requirements of N.D.Ind.L.B.R. B-2002-2.

IT IS ORDERED as follows:

A. The Motion to Shorten Notice filed on September 2, 2009 as record entry #431 is denied.¹

B. The form of Notice included in record entry #430 is defective and does not effectively provide notice to creditors of the Application to which it relates.

C. The court will take no action with respect to the Application until notice has been provided to all creditors and parties-in-interest with respect to the Application in accordance with applicable law and rules.

Dated at Hammond, Indiana on September 29, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Trustee, US Trustee

¹ The court is reluctant to shorten the notice periods required by either the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, and a notice period will certainly not be shortened absent a specific demonstration of "cause" for the request to shorten the notice period. The court additionally notes that it sees little reason for shortening a 20-day notice period to a 15-day notice period, and advises the Trustee's counsel in advance that it will not do so in this matter.